IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.5071 OF 2000

Malhari Ragho Mahale,
resident of Village Khede, Post
Ugaon, Tal.Niphad, Dist.Nashik .. Petitioner

v/s.

1. The State of Maharashtra,
having its office at Mantralaya,
Mumbai 400 032.

2. Chief Officer, Zilla Parishad,

3. Commissioner, Nashik Division,
Nashik. .. Respondents

Mr.Vinod Sahuji i/by Mr.P.B.Shah for the petitioner.

Mr.R.M.Patne, Assistant Government Pleader for State.

CORAM : R.M. LODHA AND
R.S. MOHITE, JJ.

DATED : 15th April, 2005

ORAL JUDGMENT (Per R.M.Lodha, J.)

The writ petition is heard.

2. The writ petition is wholly devoid of merit and deserves to be dismissed for the reasons which we briefly indicate hereinafter.

3. The petitioner was appointed as teacher in the Nashik Zilla Parishad with effect from 11.4.1949. As per the service record, his date of birth is

15.9.1929. The petitioner remained in continuous service with effect from 11.4.1949 to 1.7.1970. Thereafter the petitioner remained absent unauthorisedly until his date of superannuation i.e. 30.9.1987. On 19.1.1992, the petitioner applied for pension. That application came to be rejected and in our view, rightly because admittedly, the petitioner remained absent continuously after 30.6.1970. It is not even the petitioner's case that he applied for leave and that leave was granted. It is also admitted case that though the petitioner remained absent after 30.6.1970, no disciplinary proceedings were initiated against him for unauthorised absence. There is no order of removal passed by the competent authority removing the petitioner from service.

4. Rule 47 of Maharashtra Civil Services (Pension) Rules, 1982 provides that an interruption in the service of a Government servant entails forfeiture of his past service except in the cases provided in clauses (a) to (e). In so far as petitioner's absence from 1.7.1970 to 30.9.1987 is concerned, the same has to be treated as unauthorised absence. In view thereof, the petitioner's past service stood forfeited.

5. As regards petitioner's case that he had informed about his absence is bereft of substance. If the petitioner suffered from any illness, leave application on medical grounds duly supported by the medical certificate has to be made but admittedly, that was never done. The application for voluntary retirement was also not made as per the procedure prescribed. The facts and circumstances leave no manner of doubt that the absence of petitioner from 1.7.1970 to 30.9.1987 that is leave period of 17 years was unauthorised and as a result thereof, the petitioner had forfeited his past service.

6. The petitioner is not entitled to any pension and his claim for pension cannot be said to have been wrongly rejected by the State Government. Writ petition has no merit and is dismissed with no order as to costs.

(R.M. LODHA, J.)

(R.S. MOHITE, J.)